

REMARKS/ARGUMENTS

Claims 1-25, 30, 31, 34 and 35 are pending in the application. Claims 26-33 have been canceled without prejudice or disclaimer, claims 1-2, 4, 11-12, 22 and 34 have been amended, new claims 36-37 have been added. No new matter has been added. Reconsideration of the claims is respectfully requested.

Applicants thank the Examiner for favorable consideration and allowance of Claim 35.

In paragraph 2 on page 3 of the Office Action, claims 1, 2, 4, 5 and 8 are rejected under 35 U.S.C. §102 (b) as being anticipated by Swallow (US Patent No. 5820958).

In paragraph 3 on page 4 of the Office Action, claims 1, 2, 4-6, 10, 11, 15-17, 19, 20, 30, 31, 34 and 35 are rejected under 35 U.S.C. §102 (b) as being anticipated by Cunningham (US Patent No. 3348324).

In paragraph 4 on page 5 of the Office Action, claims 7-9, 12-14, 21-23 and 25 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Cunningham.

Turning to the claims, it is the examiner's position that the Swallow reference could be applied under sec. 102 even though its use is nowhere suggested, taught or even hinted at in the disclosure. Further, the teaching of Swallow is absolutely opposite of the present invention in that it would be highly damaging to the purpose of Swallow to fold it as such a fold would run counter to the objective of a smooth wall surface.

Thus, there is no basis to apply this reference without violating the rule of MPEP sec. 2413. However, to move this case to quick allowance, applicant has made changes in various claims to insure the applicability of the cited references.

For example, claim 1 recites a narrow gap as defined. The gap in Swallow does not meet this recitation and would be useless if it did, since as a crack covering

“bandage” the wide gap is essential to its purpose (a purpose, which has been repeatedly pointed out is not that of the present invention.

Claim 11 recites differential light transmission as a basis for locating the fold line. Swallow does not recognize this concept and frankly teaches away from making a fold line. It would hardly be obvious for one to assign teaching to Swallow to change its purpose entirely and impute the importance of differential light transmission – which is what would be required to use Swallow as part of a sec. 103 rejection.

Claim 37 is similar to claim 1 only without non-essential recitations and should be allowable for similar reason.

Claim 35 has been allowed and thus is it clear that the concept of differential transmissibility has been found patentable over the cited references.

Claim 37 is similar to claim 35, without non-essential recitations and should likewise be allowable.

The new Cunningham reference (‘324) has a gap 26, but no where in the specification does it recognize that differential light transmission can be used as a basis for determining the fold line. This is hardly a matter of choice. If the materials in Cunningham are fully opaque, then there is not differential. Since Cunningham is completely silent, there is no way to draw such a teaching from that reference.

The remaining dependent claims as well as the amended independent claim also support various aspects of the visually perceptibility in the gap. Claim 9 for example adds the concept of darker materials to enhance the transmission differential. Because the prior art fails to recognize the concept of visual perception, the additional concept of darker material is even more distant.

In view of the amendments and reasons provided above, it is believed that all pending claims are in condition for allowance. Applicant respectfully requests favorable reconsideration and early allowance of all pending claims.

If a telephone conference would be helpful in resolving any issues concerning this communication, please contact Applicant's attorney of record, Michael B. Lasky at (952) 253-4106.

Respectfully submitted,
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